

Statement of Peter Gilbert McGowan

Name: Peter Gilbert McGowan
Address: REDACTED WA
Occupation: Barrister
Dated: 17 April 2014

Background

1. In December 1975 I was admitted as a barrister and solicitor of the Supreme Court of Western Australia. Apart from the period May 2003 to December 2004 when I was appointed to the position of President, Town Planning Appeal Tribunal of Western Australia I have practised continuously as a legal practitioner in Western Australia since that date.
2. I did my articles at Lavan and Walsh and was admitted as a partner on 1 July 1977. Lavan and Walsh underwent a merger in 1983 with another firm and became Lavan Solomon.
3. In 1985 Lavan Solomon became Phillips Fox.
4. I continued as a partner of Phillips Fox until I retired on 30 June 1997.
5. From 1 July 1997 continuously (other than the period when I was president of the Town Planning Appeal Tribunal) I have practised as a barrister at Francis Burt Chambers in Perth.
6. The first that I was aware that the Royal Commission desired to obtain a statement from me was when I received communication by email from Ms Colleen Platford of Gilbert and Tobin on 11 April 2014. I had only, in the early hours of that morning returned from overseas. I spoke briefly to Ms Platford on 11 April 2014 and again on 15 April 2014.
7. I have no records in relation to the time at Phillips Fox during which I provided legal services to the Christian Brothers nor have I retained or have in my possession any records in relation to the time that I was a Trustee of the WA Institutions Reconciliation Trust ("**Trust**") from 1999 onwards.

Signature

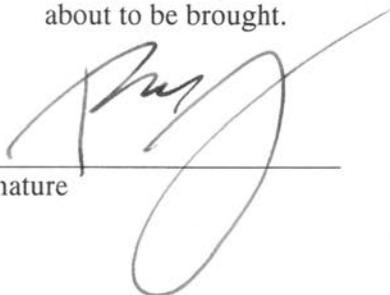
Witness

8. The following statement is my series of recollections in relation to various matters to which my attention has been drawn. Bearing in mind that many of the events occurred more than 20 years ago, my recollection is far from complete and in some instances I have no recollection.

Acting for the Christian Brothers

9. Phillips Fox (and its antecedent firms) had acted for the Christian Brothers for a long period of time. I was aware of this not only through my personal dealings with the Christian Brothers as a partner of Phillips Fox but in my capacity as managing partner was aware through archival and other materials of dealings between the firm and the Christian Brothers going back over a long period of time.
10. I do not remember when I was first instructed in relation to matters being generally raised against the Christian Brothers in relation to matters said to have occurred at Bindoon, Tardun or other educational or farm institutions operated by the Christian Brothers decades earlier.
11. I do recall that at least in the period 1992/3 onwards, I dealt with Brother Faulkner who was the provincial of the Holy Spirit provincialate which I understood to be the area of Western Australia and South Australia subject to separate administration by the Brothers.
12. I also dealt with Brother Tony Shanahan during that period and during the period when, to my recollection, Brother Faulkner had moved to other duties and Brother Shanahan appeared to have assumed the position as provincial head.
13. At a point now I do not recall I began to communicate with Mr Howard Harrison of Carroll & O'Dea solicitors of Sydney. I understood that Mr Harrison was also acting for the Christian Brothers and had already been involved in litigation which had commenced in New South Wales if not elsewhere.
14. My role as solicitor for the Christian Brothers was to provide advice as to the law which included, in this case, advice as to the applicable provisions of the *Limitation Act (WA) 1935*. Such advice is advice that I would give to any client in relation to any claim contemplated being brought against it in relation to events which occurred some decades earlier.
15. I do not now believe that I was aware, in any particular sense, of the allegations that were being made against the Christian Brothers but was aware, generally, that claims were about to be brought.

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16. I do recall attending various meetings at Westcourt (the Brothers' provincialate headquarters within the grounds of Aquinas College in Manning) and at such meetings met from time to time with Brother Faulkner and Brother Shanahan. I do not now recall what was discussed, I have no notes or records of these meetings. I have no extant diaries indicating the date or dates on which these meetings occurred.
17. My recollection is, however, that at the time that I was involved, that is in the period 1992/3 to 1994 it was not to advise in respect of any particular claim or claims, but simply to point out, as a legal practitioner to a client, what the law was in relation to such claims if brought.
18. I was not involved in investigating any allegations, if any, that were made at the time.
19. I certainly never met nor spoke to any of those who subsequently brought claims.

A. Steps that were taken to investigate the allegations raised in the litigation

20. As indicated above, I was not involved in taking any steps in investigating allegations, my role was to provide the legal framework as a legal practitioner as to what the law was within which such claims, if made, were able to be assessed by the Brothers.
21. I am aware and I have refreshed my memory by reference to the decision of Justice Anderson (1994) 12 WAR 583 that a cross-vesting action was brought by Mr VY. I do recall instructing Mr E M Heenan QC (as his Honour then was) to appear as Counsel for Brother Faulkner and for Mr B Gross QC of the New South Wales Bar to appear as Counsel on behalf of the Trustees of the Christian Brothers. Mr Gross to my knowledge had been previously engaged by Mr Harrison in relation to proceedings in the eastern states.
22. Given that these proceedings had initially been commenced in Victoria (about which I have no recollection) and since the argument was as to cross-vesting in Western Australia the short point raised before Justice Anderson was the application of the *Limitation Act (WA) 1935*.
23. His Honour ruled that the *Limitation Act* was the applicable limitation act and that as a result, it would apply in relation to any proceedings sought to be cross-vested.

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B. Costs incurred in defending the litigation

24. Certainly accounts were raised by Phillips Fox in relation to work that I did. I do not now have such records nor access to such records.

C. Settlement negotiations

25. I was not involved in settlement negotiations and believe that they primarily took place between Mr Howard Harrison of Carroll & O'Dea and representatives of Slater and Gordon.

D. Establishment of the WA Institution's Reconciliation Trust – nature and purpose of the Trust

26. I became aware of the settlement and the proposed establishment of the Trust when I was contacted by Howard Harrison to ask me if I was prepared to act as a Trustee of the Trust. I agreed that I was prepared so to act. The Chairman of the Trust was Mr Barry Mackinnon. Mr Mackinnon had an accounting background but had also been a politician at State level for a number of years and was well regarded in business circles. The other Trustees were Mr Dalton Gooding, a Chartered Accountant, again well known in business circles in Perth and Ms Carol Bahemia who I believe had been on the Legal Aid Commission.
27. Until the first meeting of the Trustees, I had not met or spoken to Mr Hayden Stephens of Slater and Gordon.
28. The Trustees met on a regular basis. For my part in relation to those who were claimants I at no stage spoke to, corresponded with or had any direct dealings with them. The Trustees agreed that any communication or direct dealing was to be effected through the Chairman Mr Mackinnon. I believe that all Trustees were conscientious in ensuring that that protocol was observed.
29. Meetings of trustees in relation to claims that were made were, in my view, approached objectively, conscientiously and with a conscious understanding of the objectives of the Trust. Thus the fact that I may have acted for the Christian Brothers prior to this and that Mr Stephens had acted for the claimants prior to the establishment of the Trust reflected in no way, in my view, in the way in which either of us approached our respective tasks as Trustees of the Trust.

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Witness



30. Again, I have no records in relation to the Trust's operations from 1999 onwards including the extension of the operation of the Trust. All dealings in relation to that and CBERS and the Christian Brothers in Western Australia were handled entirely by Mr Mackinnon. As required he reported back to the Trustees.

E. Winding up of the Trust and allocation of any remaining funds

31. After the 3 years of the Trust had expired there were funds remaining. I do not recall what amount remained.
32. Mr MacKinnon dealt with the Christian Brothers in relation to those funds. That then led to the establishment of a Charitable Trust of which the trustees were Mr MacKinnon Mr Stephens and myself.
33. This Trust dealt with a defined number of claimants –I do not know recall how many. I think the Trust was to operate for a further 5 years but I am ,absent seeing the deed, not sure of the term.
34. Again, the winding up of the Trust was effected in accordance both with the Deed and as a result the discussions that took place between Mr Mackinnon, the Brothers and CBERS and resolutions of the Trustees. I do not now recall the details and I have no information that I have retained in that regard.



Peter Gilbert McGowan

Date:



Signature

CHRISTOPHER STOKES

Witness